

1999 SENATE JUDICIARY

SB 2027

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2027

Senate Judiciary Committee

Conference Committee

Hearing Date January 12, 1999

Tape Number	Side A	Side B	Meter #
1		x	3889 - end
2	x		0 -4828
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SB2027 relates to publication of notice of administrative rulemaking; and to provide an effective date.

SENATOR STENEHJEM opened the hearing on SB2027 at 11:15 A.M.

All were present.

SENATOR ANDRIST, Interim Administrative Rules Committee, we feel the rulemaking system is out of control. As you view these proposals, our Committee approved these rules unanimously. This bill deals with a deficient public notice system. Notices appear only in daily newspapers at this time and they are very small. We think more issues should come before the legislature than this Committee.

JOHN WALSTAD testified to explain SB2027. Testimony attached.

This Bill changes current law with regard to the notice that has to be published. Under current law, the agency is to prepare a notice like the one I have distributed and that notice is to be published in the 10 daily newspapers. The bill draft before you is that two different kinds of notice will be necessary. The full notice is still to be provided to our office and published in 52 county papers. Shorter notice but published in more newspapers.

DENISE LAWSON, North Dakota Newspaper Association, testified in support of SB2027.

Testimony attached.

BLAINE NORDWALL, Department of Human Services, testified in opposition to SB2027.

Testimony attached.

SENATOR STENEHJEM asked what their department spend each year on publications.

BLAINE NORDWALL stated that their department average about 21 rulemaking projects per year for the past year.

SENATOR TRAYNOR asked if there were more than one hearing on the child support guidelines.

BLAINE NORDWALL stated that they conducted 2 hearings on these guidelines. One in Fargo and one in Bismarck. Number in attendance at Fargo hearing was about 50, Bismarck hearing about 45.

SENATOR STENEHJEM stated he would allow the newspaper people to respond to the amendment that Mr. Nordwall proposed.

DENISE LAWSON responded that they think the amendment is a good idea.

SENATOR STENEHJEM asked what would be the reaction if we passed this bill but said that it only had to be published once instead of twice.

DENISE LAWSON stated they would support this because of the extended exposure going from the ten dailies to the 52 counties.

CHARLES JOHNSON, Public Service Commission, testified in opposition to SB2027.

Testimony attached.

DAN BIESHEUVAL, R-KYDS, testified in support of SB2027. He thinks this is a good idea and give the people a chance to come to the hearing.

SENATOR STENEHJEM CLOSED the hearing on SB2027.

Discussion.

SENATOR TRAYNOR made a motion to adopt the amendment from Blaine Nordwall,

SENATOR LYSON seconded. Motion carried. Amendment is adopted.

We are all in agreement that it requires the request for publication by the agency.

SENATOR WATNE made a motion to adopt a second amendment to change page 1, line 7, and change twice to at least once, SENATOR NELSON seconded. Motion carried. Amendment is adopted.

SENATOR TRAYNOR made a motion to overstrike second on page 2, lines 7 and 10,

SENATOR NELSON seconded. Motion carried. Amendment is adopted.

SENATOR WATNE made a motion on DO PASS ON AMENDMENT, SENATOR LYSON seconded. Motion carried.

SENATOR TRAYNOR will carry the bill.

**FISCAL NOTE**

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: SB 2027

Requested by Legislative Council \_\_\_\_\_ Date of Request: 1-14-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:** The average cost of newspaper publication of notice would increase from approximately \$800 to approximately \$2,234. Based on an average of 96 sets of agency rules per biennium published once, this amounts of a total increase in cost of \$68,832. This fiscal note assumes 37% would come from the general fund and 63% from special funds.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0	0	0	0	0
Expenditures:	0	0	25,468	43,364	50,936	86,728

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: \_\_\_\_\_ 0
- b. For the 1999-2001 biennium: \_\_\_\_\_ 0
- c. For the 2001-03 biennium: \_\_\_\_\_ 0

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed, attach a supplemental sheet.

Signed *Pam Sharp*

Typed Name Pam Sharp

Department OMB

Phone Number 328.4606

Date Prepared: 1-14-99

**FISCAL NOTE**

(Return original and 10 copies)

Bill/Resolution No.: SB 2027 Amendment to: \_\_\_\_\_

Requested by Legislative Council Date of Request: December 10, 1998

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:** The average cost of newspaper publication of notice would increase from approximately \$800 to approximately \$2,234. Based on an average of 96 sets of agency rules per biennium, this amounts to a total increase in cost of \$137,664. This fiscal note assumes 37% would come from the general fund and 63% from special funds.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures:	-0-	-0-	50,936	86,728	50,936	86,728

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: -0-
- b. For the 1999-2001 biennium: -0-
- c. For the 2001-03 biennium: -0-

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-

If additional space is needed, attach a supplemental sheet.

Signed *Pam Sharp*

Typed Name Pam Sharp

Date Prepared: 12/22/98

Department OMB

Phone Number 328-4606

Date 1-12-99  
Roll Call Vote # 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2027

Senate Judiciary Committee

- Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Motion on Amendment

Motion Made By Senator Graynor Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

Date: 1-12-99  
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

Senate Judiciary Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass on Amendment

Motion Made By Watne Seconded  
Traynor By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Floor Assignment Senator Traynor



REPORT OF STANDING COMMITTEE

SB 2027: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2027 was placed on the Sixth order on the calendar.

Page 1, line 16, remove "an"

Page 1, line 17, remove "abbreviated newspaper publication notice must be", overstrike "published" and insert immediately thereafter "the agency shall request publication of an abbreviated newspaper publication notice", and overstrike "twice" and insert immediately thereafter "once"

Page 2, line 7, overstrike "second"

Page 2, line 10, overstrike "second"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2027


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. : 2027

House Judiciary Committee

Conference Committee

Hearing Date : February 24, 1999

Tape Number	Side A	Side B	Meter #
1	X		31
Committee Clerk Signature 			

Minutes:

SEN WATNE Submitted written testimony, a copy of which is attached.

JOHN WALSTAD (LC) This bill was drafted to get the public more involved in the rule making process. If we go to the county papers we will be reaching twice as many people as we do with the 9 dailies. The Legislative Council now has a system where interested persons pay \$50 per year to be on a mailing list for notices of rule making. On the first day of each month we mail the notices that were received the previous month to the persons on that list. Notices are also on the internet.

DANIEL BIESHEUVEL (R-KIDS) Submitted written testimony, a copy of which is attached.

DENISE LAWSON (NDNA) Submitted written testimony, a copy of which is attached.. She commented that the notice should also inform the public that they can present written comments

Page 2

House Judiciary Committee

Bill/Resolution Number :~~2024~~ <sup>2027</sup>

Hearing Date : February 24, 1999

without attending. She also presented written testimony from NEAL SHIPMAN, a copy of which is attached.

REP. KLEMIN commented that the notice should be in or near the "Public Notices" because that is where lawyers look to get the notices.

#### COMMITTEE ACTION

REP. KLEMIN presented suggested amendments to SB 2027.

REP. DELMORE moved the committee adopt the amendments as suggested. Rep. Hawken seconded and the motion carried on a roll call vote of 14 ayes, 1 nay and 0 absent.

REP MARAGOS moved that the committee recommend that the bill DO PASS AS AMENDED.

Rep. Delmore seconded and the motion carried on a roll call vote with 15 ayes, 0 nays and 0 absent. Rep. Klemin was assigned to carry the bill on the floor.

Date: 3/31/92  
Roll Call Vote #: /

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2027

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number Am. to 2027

Action Taken \_\_\_\_\_  
\_\_\_\_\_

Motion Made By Delmore Seconded By Hawken

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN		✓
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 14 No /

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 5/3  
 Roll Call Vote #: \_\_\_\_\_

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2027**

House JUDICIARY Committee \_\_\_\_\_

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number Do pass as Amendment

Action Taken \_\_\_\_\_

Motion Made By Maragos Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 15 No 0

Absent 0

Floor Assignment Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2027, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2027 was placed on the Sixth order on the calendar.

Page 1, line 16, remove the underscored comma and overstrike "and"

Page 1, line 17, replace "the" with ". The" and replace "request publication of" with "publish"

Page 1, line 18, remove "publication"

Page 1, line 22, replace "with" with ". The newspaper publication of the notice must include"

Page 1, line 23, replace the first "and" with ". The newspaper publication of notice must include"

Page 1, line 24, after the first "and" insert "must include"

Renumber accordingly

**1999 SENATE JUDICIARY  
CONFERENCE COMMITTEE  
SB 2027**



1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2027

Senate Judiciary Committee

Conference Committee

Hearing Date March 24, 1999

Tape Number	Side A	Side B	Meter #
1	x		0 - 2000
4-6-99 1		x	0 - 1500
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SENATOR STENEHJEM opened the Conference Committee hearing on SB2027.

Senator Stenehjem, Senator Traynor, Senator Nelson, Representative Klemin, Representative Hawken, and Representative Mahoney were present.

SENATOR STENEHJEM asked them to explain what they did with the amendments.

REPRESENTATIVE KLEMIN asked what the problems were with the amendments.

SENATOR STENEHJEM explained that this was to provide that the administrative agency had to request that the matter be published and not actually guarantee that it got published and that can be a problem because there are 53 county newspapers you can send a request to have something published and if it doesn't actually happen that the newspaper makes a mistake, you have to start all over from the beginning in all the newspapers.

REPRESENTATIVE KLEMIN asked if there was a problem with putting in the place where they can send comments in the abbreviated ad. The abbreviated ad had to indicate the place where you could get copies of the rules and we added in and where to send comments.

SENATOR NELSON stated that this wasn't in the amendment.

REPRESENTATIVE HAWKEN stated it is not in there, it was supposed to be but it's not there. It got left out.

REPRESENTATIVE KLEMIN stated he has the amendment that he had prepared.

SENATOR STENEHJEM asked what the amendment was that didn't get in.

REPRESENTATIVE KLEMIN stated that the abbreviated publication must include the address and telephone number to obtain a copy of the proposed rules, location, time, date of the public hearing, and where to submit written comments.

SENATOR STENEHJEM stated that if the House recedes from all of their amendments, we could further amend to provide for what you want.

REPRESENTATIVE KLEMIN stated that we are making quite a departure from the usual procedural due process requirement of giving notice and that as I understand the request of publication part of it, since it's only going to be published once now and if you request publication and it's not published, then that is it. There is no notice given at all. How many newspapers do you have to have that don't publish it before it is a Constitutional issue of due process. We are only publishing it once, we used to publish it twice.

SENATOR STENEHJEM stated we used to publish it twice but only in the each daily newspaper and now we are going to publish it in every official county paper.

REPRESENTATIVE KLEMIN stated he would like to suggest something. If we got a situation where it doesn't get published at all, that is my problem and I don't believe we could just excuse that situation, but let me suggest that maybe since it is still being published in all the dailies that maybe it has to be published there, if it's not published in one of those then it has to be done over in those. If it is missed in one of the county papers, that may not be a problem. The whole idea is to provide more notice.

SENATOR TRAYNOR stated that this kind of a notice isn't a notice like you are giving a defendant in a lawsuit such as substituted service, this is a public notice.

SENATOR STENEHJEM stated that we are only trying to cover where there is a technical mishap. If something happens where there is a mixup, we don't want them to have to start all over from the very beginning.

REPRESENTATIVE KLEMIN stated that if it is not published at all in the newspapers then someone is not getting notice.

SENATOR STENEHJEM stated that we are talking about an agency and what they are required to do, and what they are required to do is to request that the notice be published. They are not in charge of publishing the newspapers, this statute is an obligation for state agencies. If they have requested the publication, they have done what the law requires. If it doesn't get published, it is not the agencies fault.

REPRESENTATIVE KLEMIN stated that the law the way it is now, if they request publication and it doesn't get published, there is no notice. We are changing it to say that if they request publication and it doesn't get published, it is okay.

SENATOR NELSON stated that current law is requiring twice in dailies, there are 10 dailies, we are getting 20 notices out. The new change is once in the 53 county newspapers. That is 2 ½ times the notice they are getting now.

REPRESENTATIVE KLEMIN stated that if someone doesn't get notice because it is not published at all.

SENATOR NELSON stated that they may not get it now, if they don't get one of those ten newspapers.

REPRESENTATIVE HAWKEN stated she agrees with Senator Nelson. I think the coverage we have now is not all that great because people may or may not get that daily. They are also stuffed in the legal section and the way we have changed the ad is better. I think with putting the notice in the county newspapers there will be more people aware of the process. The other thing is that the people who are truly involved with an individual agency can already be on their mailing list, so they would get notification personally.

SENATOR TRAYNOR made a motion that the House recede from its amendment on engrossed SB2027, SENATOR NELSON seconded. Discussion. Representative Klemin stated that he thinks we are doing a disservice to the people that don't get notice at all, those don't get notification. Secondly, if we do recede from these I think we should put in this one about submitting written comments. Senator Stenehjem stated if this motion prevails, I will take a motion to further amend. Representative Mahoney stated we are lessening the requirements with the one time publication and say it is not published at all even though they made the request. If we could find some middle ground where they had to at least be published in the dailies.

Representative Klemin stated that he would be satisfied with that, if it was missed in one of the county papers that may not be so bad. Motion failed.

JACK MCDONALD gave some suggestions on the middle ground. He will work with Representative Klemin on some amendments.

SENATOR STENEHJEM suggested we could put in an exception where if it is missed, it could be published in the next edition.

**APRIL 6, 1999 TAPE 1, SIDE B**

SENATOR STENEHJEM opened the Conference Committee hearing on SB2027.

All were present.

REPRESENTATIVE KLEMIN proposed some amendments. My concern is that subscribers will not get notice.

SENATOR STENEHJEM asked if everyone has received the Jack McDonald memo that points us toward the compliance statute.

REPRESENTATIVE KLEMIN stated that I am not certain that satisfies me in the objective of the whole bill where we are trying to provide better notice.

REPRESENTATIVE MAHONEY asked why this language on page 1, line 191.

REPRESENTATIVE KLEMIN said Legislative Council said this should be taken out of existing language because there are some official county newspapers that are not published in North Dakota.

JACK MCDONALD stated that all the county newspapers are published in North Dakota.

4-6-99

REPRESENTATIVE KLEMIN made a motion to adopt the Klemin amendments. Motion failed for lack of a second.

REPRESENTATIVE MAHONEY moved the McDonald amendments, Senator Nelson seconded. Discussion.

REPRESENTATIVE KLEMIN stated that his problem is that the agency just has to request the publication, not actually have to publish this.

SENATOR STENEHJEM stated that is substantial compliance is in the statute. If a significant segment don't publish that could be another issue.

REPRESENTATIVE KLEMIN stated what is a significant segment, when are enough newspapers required to not publish it before it becomes a substantial noncompliance.

SENATOR STENEHJEM stated that he does not see a problem here. The newspapers get paid for this and they will want to publish these.

REPRESENTATIVE MAHONEY stated that substantial compliance also goes to the notice aspect.

SENATOR STENEHJEM stated the substantial compliance language applies to the whole rulemaking process.

REPRESENTATIVE KLEMIN stated that the reason is for better notice.

SENATOR NELSON stated she believes they are getting better and more notice with the 53 county papers rather than the twice in the 10 dailies.

REPRESENTATIVE HAWKEN stated that she believes the increase is terrific. The ad is also better to see and read.

REPRESENTATIVE MAHONEY stated that all the dailies are official county newspapers.

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Senate Judiciary Committee

Bill/Resolution Number SB2027

Hearing Date ~~March 24, 1999~~

4-6-99

Roll call vote was taken. Motion passed. 5 - 1 - 0

(Bill Number) SB2027 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Senator Stenehjem Y
Senator Traynor Y
Senator Nelson Y

For the House:

Representative Klemin N
Representative Hawken Y
Representative Mahoney X

[X] recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
the (Senate/House) amendments on (SJ/HJ) page(s) 660 -

[ ] and place on the Seventh order.

[X], adopt (further) amendments as follows, and place
SB2027 on the Seventh order:

[ ] having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) SB2027 was placed on the Seventh order of business on the
calendar.

DATE: 4/16/99

CARRIER:

LC NO. of amendment

LC NO. of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

(1) LC (2) LC (3) DESK (4) COMM.



**REPORT OF CONFERENCE COMMITTEE**

**SB 2027, as engrossed:** Your conference committee (Sens. W. Stenehjem, Traynor, C. Nelson and Reps. Klemin, Hawken, Mahoney) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 660, adopt amendments as follows, and place SB 2027 on the Seventh order:

That the House recede from its amendments as printed on page 660 of the Senate Journal and page 722 of the House Journal and that Engrossed Senate Bill No. 2027 be amended as follows:

Page 1, line 19, after "The" insert "abbreviated"

Page 1, line 23, replace the first "and" with ". The notice must also include"

Page 1, line 24, after "rules" insert "or to submit written comments,"

Renumber accordingly

Engrossed SB 2027 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

SB 2027

# ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, and 28-32-03.3. The committee is required to review administrative agency rules to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There is dissatisfaction with administrative rules or statutes relating to administrative rules.
3. There are unclear or ambiguous statutes relating to administrative rules.

The committee may recommend rule changes to an agency, formally object to a rule, or recommend to the Legislative Council the amendment or repeal of the statutory authority for the rule. The committee also can find a rule void or agree with an agency to amend an administrative rule to address committee concerns, without requiring the agency to begin a new rulemaking proceeding.

Fee schedules for medical and hospital services proposed for adoption as administrative rules by the Workers Compensation Bureau must be approved by the committee under NDCC Section 65-02-08.

The Legislative Council delegated to the committee authority under NDCC Section 28-32-02 to distribute administrative agency notices of proposed rulemaking and to approve extensions of time for administrative agencies to adopt rules and its responsibility under NDCC Section 28-32-15 to receive notice of appeal of an administrative agency's rulemaking action.

Committee members were Representatives LeRoy G. Bernstein (Chairman), Charles Axtman, Chris Christopher, William R. Devlin, Scot Kelsh, Keith Kempenich, Kim Koppelman, Stacey L. Mickelson, Jon O. Nelson, Darrell D. Nottestad, Bob Skarphol, and Rich Wardner and Senators John M. Andrist, Bob Stenehjem, and Steven W. Tomac. Representative Tom D. Freier was a member of the committee until his resignation from the Legislative Assembly on April 6, 1998. Representative Bill Oban was a member of the committee until his death on July 10, 1998.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

## ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those state agencies authorized to adopt rules under the Administrative Agencies Practice Act (NDCC Chapter 28-32). By statute, a rule is an agency's statement of general applicability that implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. Properly adopted rules have the force and effect of law.

A copy of each rule adopted by an administrative agency must be filed with the office of the Legislative Council for publication in the North Dakota Administrative Code (NDAC).

Under NDCC Section 54-35-02.6, it is the standing duty of the committee to review administrative rules adopted under NDCC Chapter 28-32. This continues the rules review process initiated in 1979.

For rules scheduled for review, each adopting agency is requested to provide the committee with information on:

1. Whether the rules resulted from statutory changes made by the most recent regular session of the Legislative Assembly.
2. Whether the rules are related to any federal statute or regulation.
3. The rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.
4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. Each agency is asked to describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint and to summarize the comments of any person who offered comments at the public hearings on these rules.
5. Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rule is expected to have an impact on the regulated community in excess of \$50,000, and whether a regulatory analysis was issued.
6. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost of staff time used in developing the rules.
7. The subject matter of the rules and the reasons for adopting the rules.
8. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-02.5.

During committee review of the rules, agency testimony is required and any interested party may submit oral or written comments.

## Current Rulemaking Statistics

The committee reviewed 2,789 rule sections that were changed from November 1996 through October 1998. Table A shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

For many years, committee members have expressed concern about the volume of administrative rulemaking. The trend of increased rulemaking activity appears to have reversed since 1995.

Although rules differ in length and complexity, comparison of the number of administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of NDAC sections amended, repealed, created, superseded, reserved, or redesignated during each designated time period:

Time Period	Number of Sections
July 1979 - October 1980	1,440
November 1980 - August 1982	916
September 1982 - November 1984	1,856
December 1984 - October 1986	1,280
November 1986 - October 1988	2,681
November 1988 - October 1990	2,325
November 1990 - October 1992	3,079
November 1992 - October 1994	3,235
November 1994 - October 1996	2,762
November 1996 - October 1998	2,789

For committee review of rules, the Legislative Council staff prepares an administrative rules supplement containing all rules changes submitted since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, e.g., changes are indicated by overstrike and underscore. The administrative rules supplements for the period November 1996 through October 1998 consisted of 4,123 pages of rules changes. This compares with 3,809 of rules changes during the November 1992-October 1994 biennial period and 3,140 pages of rules changes considered by the committee during the November 1994-October 1996 biennial period.

### Extending Time to Adopt Rules

Many rules changes are mandated by changes to federal laws or rules. Most rules changes result from recent statutory changes made by the Legislative Assembly. Any rule change made to implement a statutory change must be adopted within nine months after the effective date of the statutory change unless an extension is granted. The committee considered and granted requests from three agencies for extensions of time to adopt administrative rules. An extension of time was approved for the Secretary of State to adopt rules to govern methods for signing, subscribing, or verifying documents filed by electronic means. Because of the scope and importance of these rules, additional time was required to allow involvement of affected state agencies and the public. An extension was approved to accommodate a change of personnel in the board office for the Board of Animal Health to adopt rules relative to primates, wolves, and wolf hybrids under 1997 legislation. An extension was approved for the Tax

Commissioner to adopt rules implementing statutory revision in 1997 to financial institutions tax laws. extension was requested due to the complexity of implementing the new financial institutions tax and developing appropriate tax forms and instructions.

### Objecting to Rules

The committee may file an objection to any portion of a rule the committee determines to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency. The objection must contain a concise statement of the committee's reasons for its action. Within 14 days after the filing, the adopting agency is to respond to the objection. After receiving the response, the committee may withdraw or modify its objection. An objection shifts the burden of persuasion to the agency in any judicial action regarding the rule to establish that the rule objected to is within the statutory authority delegated to the agency. If the agency fails to meet this burden, the court must declare the portion of the rule objected to invalid and judgment against the agency must include court costs.

### Tax Commissioner

The Tax Commissioner requested the committee to remove an objection to NDAC Section 81-03-09-38 filed on November 4, 1992. The rule in question relates to apportionment of income of broadcasters for income purposes and representatives of broadcasters expressed concern to the Administrative Rules Committee in 1992 that the rule would impact determination of income tax liability for broadcasters. Since the filing of the objection, the rule in question has been amended and during the hearings on the amendment to the rule, no comments were received from representatives of broadcasters. The committee approved a motion to remove the objection to the rule.

### Voiding of Rules

Under NDCC Section 28-32-03.3, the Administrative Rules Committee may void all or part of a rule within 90 days after the date of the Administrative Code supplement in which the rule change appears or at the first committee meeting after a regular legislative session, for rules appearing in the Administrative Code supplement from November 1 through May 1 encompassing a regular legislative session. The committee may carry over, for one additional meeting, consideration of voiding administrative rules. This allows the committee to act more deliberately in rules decisions and allows agencies additional time to work with affected groups to develop mutually satisfactory rules. The committee may void all or part of a rule if the committee makes the specific finding that with regard to the rule there is:

1. An absence of statutory authority;

2. An emergency relating to public health, safety, or welfare;
3. A failure to comply with express legislative intent or to substantially meet the procedural requirements of NDCC Chapter 28-32 for adoption of the rule;
4. A conflict with state law;
5. Arbitrariness and capriciousness; or
6. A failure to make a written record of its consideration of written and oral submissions respecting the rule under NDCC Section 28-32-02(3).

Within three business days after the committee finds a rule void, the office of the Legislative Council must provide written notice to the adopting agency and the chairman of the Legislative Council. Within 14 days after receipt of the notice, the agency may file a petition with the chairman of the Legislative Council for Legislative Council review of the decision of the committee. If the adopting agency does not file a petition, the rule becomes void on the 15th day after the notice to the adopting agency. If within 60 days after receipt of a petition from the agency the Legislative Council has not disapproved the finding of the committee, the rule is void.

#### **Game and Fish Department**

The Game and Fish Department adopted rules to govern activities and licensing of hunting and fishing guides and outfitters. Committee members recognized that several issues covered in the rules had been the subject of proposed 1995 legislation that failed. The committee approved a motion to void the rules on licensing guides and outfitters. Committee members were concerned that the rules as adopted required a guide or outfitter to maintain proof of general liability insurance coverage and certification in adult cardiopulmonary resuscitation and that a guide or outfitter must enter a written contract with each client. These subjects were the topic of the failed legislation, created policy that should be the subject of legislation for consideration by the Legislative Assembly, and appeared to be a fence-building effort of the Guides and Outfitters Association. Game and Fish Department representatives countered that they were advised by individual legislators during the 1995 legislative session that these issues should be addressed through administrative rules and that the department tried to accommodate that suggestion in working on these rules amendments through 1995 and 1996. Department representatives agreed with the Administrative Rules Committee to further amend the rules to eliminate requirements for proof of liability insurance coverage, certification in adult cardiopulmonary resuscitation, and written contracts with clients. Upon agreement with the department on the additional amendments, the committee withdrew its motion to void the rules.

#### **Public Service Commission**

The Public Service Commission adopted a rule at the request of telecommunications industry representatives to give local telecommunications service providers the right to deny a customer access to long-distance services if the customer is delinquent in payment for long-distance services. Committee members were concerned that customers may have legitimate reasons for nonpayment of billed long-distance call charges and that the rule would place the Public Service Commission in the position of a bill collector for long-distance service providers. A Public Service Commission representative said the rule was adopted by the commission on a trial basis. The committee approved a motion to void the rule change, and the commission did not seek review so the rule change became void.

#### **Department of Health**

The State Department of Health adopted rules to govern the state trauma system. Committee members had numerous questions about operation of the trauma system and its effect on facilities in the state, particularly in small communities. The committee approved a motion to void the trauma system rules. At the subsequent meeting, the committee received a thorough briefing from representatives of the department, medical facilities, the North Dakota Health Care Association, and ambulance services. The committee withdrew its motion to void the rules and agreed with the department on a minor amendment to the rules to resolve concerns about interpretation of terminology relating to activation of trauma codes for major trauma patients.

#### **Industrial Commission**

The Industrial Commission adopted rules relating to oil production report filing and seismic or geographical exploration requirements. Among the rules was a requirement that production report signatures must be witnessed. House Bill No. 1194 (1997) eliminated the requirement of notarizing signatures on production reports and had not imposed a requirement that signatures must be witnessed. The committee carried consideration of the rule over for a subsequent meeting to receive further information. A motion to void the rule failed.

#### **Department of Human Services**

The Department of Human Services adopted extensive rules governing licensure of child care facilities. A number of individuals affected by the rules disagreed with several aspects of the rules. The committee approved a motion to carry over consideration of the rules to a subsequent meeting and requested that the department work with interested parties to try to reach agreement on issues on which misunderstanding or disagreement existed. The department undertook a mediation process with regard to 39 issues identified as areas for discussion. The mediation process resolved

17 issues, and the department recommended rules amendments to accomplish changes necessary to reflect those agreements. The committee approved a motion to agree with the department on the proposed changes to the rules. Another 10 issues were determined to deal with areas outside the coverage of the pending rules. On the remaining two issues considered in the mediation process, no agreement was reached with regard to requirements for provisional licensing and fire safety. Child care providers withdrew their opposition to the provisional licensing rule and the committee took no action regarding the fire safety requirement rule, so both rules were left as adopted by the department.

### **Committee Considerations**

Committee members expressed appreciation for 1995 legislative changes to the rulemaking process which gave the committee authority to void rules and allowed rules amendments by agreement of the adopting agency. Committee members also expressed appreciation for the cooperative attitude of agencies affected by this authority. Committee members indicated this addition to the rulemaking process makes the process more responsive to public input, improves the final product of the process, and greatly reduces occasions when legislative intervention would be required to settle differences of opinion.

Several committee members raised concerns during discussions of the administrative rules process and statutes. Concern was expressed that the Administrative Code is not being reviewed and kept current by administrative agencies. Concern was expressed that when a problem is pointed out with existing rules, the Administrative Rules Committee lacks authority to address the problem. The committee's authority applies to only rules being reviewed upon creation or amendment and not to rules that have been in existence for an extended period. Concern was expressed that rulemaking authority is too broad and that rules are used to create policy in areas in which legislative consideration should apply. It was suggested that review is required of statutory authority for rulemaking and that the Legislative Assembly must carefully define rulemaking authority in the future to limit agencies to the appropriate use of rules. Several discussions were held about how to better inform the public about pending rulemaking activity.

### **Department of Public Instruction**

The committee requested several briefings from the Department of Public Instruction regarding rulemaking plans of the department. Under 1997 legislation, the department was made an administrative agency for all purposes under the Administrative Agencies Practice Act (NDCC Chapter 28-32). This change becomes effective November 1999, and requires the department to replace all of its informal rules with formally adopted administrative rules to be published in the North Dakota Administrative Code. The committee expressed its concern to

the department that this is an important process that will take time and requires substantial opportunities for public input. Department representatives briefed the committee on four occasions about proposed rulemaking plans and expressed confidence that the department can complete rulemaking activity before November 1999.

### **Recommendations**

The committee recommends House Bill No. 1023 to provide that administrative rules will be effective only until August 1 after the next regular legislative session following the effective date of the rule unless they are designated by the Administrative Rules Committee as procedural or interpretive rules. The bill is intended to force issues of policy to be removed from administrative rules and brought to the consideration of the Legislative Assembly. The committee considered extending sunset to all existing rules but decided against it because of the burden for review of rules which would have been placed on agencies and the committee. Under the recommended bill the only rules created or amended after July 31, 1999, which will remain in effect indefinitely will be rules the committee has designated as procedural or interpretive.

The committee recommends House Bill No. 1024 to allow the Administrative Rules Committee to call up administrative rules for review. Rules called up for review would be subject to the authority of the Administrative Rules Committee to file an objection or to void a rule. Calling a rule up for review requires 30 days' written notice to the adopting agency and a description of concerns with the rule to which the agency is to respond. The committee believes authority to review existing rules is important and will be used only when problems are pointed out, which could be initiated by the adopting agency if minor changes or corrections are needed that do not merit the time and expense of a full rulemaking proceeding. The bill also repeals a provision of law allowing interested parties to file a petition with an agency for reconsideration of a rule. The committee found that the law gives an agency no authority to act in response to a petition for reconsideration, other than the statutory right of agencies to begin a new rulemaking proceeding.

The committee recommends House Bill No. 1025 to provide that an agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs and to require an agency to repeal or amend any existing rule adopted from federal guidelines which is not relevant to state regulatory programs. This bill is an expansion of current law providing that environmental rules are not to incorporate federal guidelines not relevant to North Dakota.

The committee recommends House Bill No. 1026 to provide that an agency may adopt an administrative rule only when the rule falls within an area in which the agency has been specifically required or authorized to

not rules by state or federal law or federal rules. The bill also requires the Administrative Rules Committee to limit the statutory rulemaking authority of each administrative agency to seek to limit administrative rulemaking to areas in which specific requirement or authorization of rulemaking exists. The bill is intended to initiate refining of the distinction between rules and statutes and provide guidance for the Legislative Assembly and administrative agencies on which matters should be governed by statute or rule.

The committee recommends Senate Bill No. 2027 to require administrative rulemaking notices to be published in each official county newspaper rather than in each

daily newspaper. The bill requires publication of a more abbreviated notice than present law but requires a headline showing the general topic, a statement that rules on the topic will be considered, a telephone number to obtain a copy of the proposed rules, and the time and place of the public hearing. Because the bill requires publication in 52 county newspapers rather than nine daily newspapers, it was estimated that notices would be available to 47 percent more newspaper subscribers but the average cost of newspaper publication of notice would increase from approximately \$800 to approximately \$2,200.

**TABLE A**

STATISTICAL SUMMARY OF RULEMAKING						
November 1996 Through October 1998		Supplements 209 Through 232				
Agency	Amend	Create	Supersede	Repeal	Special	Reserved
Board of Accountancy	9	1				
Office of Management and Budget	68	36	13	14		
Aeronautics Commission	1					
Commissioner of Agriculture	4					
Department of Banking and Financial Institutions	8	2		1		
Board of Barber Examiners		1				
Credit Review Board	5			1		
Board of Dental Examiners	7					
State Board of Funeral Service	28	25		8		
Game and Fish Department	4	1		4		
Board of Cosmetology	32	1	2			
State Department of Health	420	142		12	24	64
Department of Transportation		1				
Industrial Commission	7	10		2		
Commissioner of Insurance	16	49	2	60	3	
Commissioner of Labor	8					
Board of Animal Health	14	5				
Board of Medical Examiners	3					
Milk Marketing Board	19	8			1	
Board of Nursing	45	73		72		
Board of Optometry	1	4				
State Personnel Board	3	3		3		
Pesticide Control Board	4	4	1			
Board of Pharmacy	2	7		1		
Board of Podiatric Medicine	3					
Committee on Protection and Advocacy	4	4				
Education Standards and Practices Board	18					
Public Service Commission	59	49		1		
Retirement Board	25	4		7		
Secretary of State	3	44		15		3
Securities Commissioner	4			3		
Seed Commission	12					
Department of Human Services	311	187		53	35	22
Board of Social Work Examiners	8	7		22		
Tax Commissioner	17	4		8		
Board of Trustees of the Teachers' Fund for Retirement	18			2		
Water Commission	9	13		60		
Workers Compensation Bureau	66	10		10		
Private Investigative and Security Board	13					
Board of Counselor Examiners	5	3		1		
Office of Administrative Hearings	6	2				1
State Gaming Commission		112		147		
Real Estate Appraiser Qualifications and Ethics Board	9			1		
Sections affected	1,298	812	18	508	63	90
Grand total all sections	2,789					

Walstad



# North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

GARY J. NELSON  
State Senator  
Chairman

JOHN D. OLSRUD  
Director

JAY E. BURINGRUD  
Assistant Director

CHESTER E. NELSON, Jr.  
Legislative Budget  
Analyst & Auditor

JOHN WALSTAD  
Code Revisor

January 4, 1999

TO: SUBSCRIBERS OF THE ADMINISTRATIVE AGENCY NOTICE OF PROPOSED  
RULEMAKING SERVICE

Enclosed are copies of administrative agency proposed rulemaking notices this office received during December 1998. Please contact this office if you have any questions concerning these materials.

Sincerely,

A handwritten signature in black ink, appearing to read "John Walstad", written over a circular stamp.

John Walstad  
Code Revisor

JW/TS  
Encs.





NORTH DAKOTA  
 DEPARTMENT OF HEALTH  
 600 E. Boulevard Avenue  
 Bismarck, ND 58505-0200

OFFICE OF  
 STATE HEALTH OFFICER  
 701-328-2372  
 FAX 701-328-4727

December 4, 1998

Mr. John Walstad  
 Code Revisor  
 North Dakota Legislative Council  
 600 East Boulevard Avenue  
 Bismarck, ND 58505-0360

DEC 17 1998

Dear Mr. Walstad:

In accordance with N.D.C.C. subsection 28-32-02, enclosed is the public notice concerning the proposed repeal of the following North Dakota Administrative Code chapters:

- Chapter 33-02-01. Performance of Standard Serological Tests for Syphilis.
- Chapter 33-03-01. Free Standing Outpatient Facility—Including Surgical Facilities—Excluding Physician Clinic.
- Chapter 33-03-03. Maintenance and Operation of Public Water Works Systems, Swimming Pools, and Sewerage Systems.
- Chapter 33-03-04. Quality of Water.
- Chapter 33-03-05. School Water and Sewerage Systems.
- Chapter 33-03-06. Sale of Bulk and Bottled Water Supplies Intended for Domestic Purposes.
- Chapter 33-03-07. Care and Disposal of Refuse and Garbage.
- Chapter 33-03-16. Construction and Location of Toilets.
- Chapter 33-03-17. Temporary Work Camps.
- Chapter 33-03-18. Milk Sanitation.
- Chapter 33-03-19. Food and Drink Sanitation.
- Chapter 33-03-20. Minimum Requirements for Sanitation in Places of Employment.
- Chapter 33-03-21. Minimum Requirements for Sanitation in Camps.
- Chapter 33-03-22. Migrant Labor Housing.
- Chapter 33-06-06. Food Handlers.
- Chapter 33-31-01. Rules Pertaining to Foods, Drugs, Cosmetics.
- Chapter 33-31-02. Definitions and Standards for Food Products.

Sincerely,

*Murray G. Sagsveen*  
 Murray G. Sagsveen  
 State Health Officer *by lrr*

MGS:lrr  
 Enc.

cc: Robert Barnett  
 Darleen Bartz  
 Alana Knudson-Buresh, Ph.D.  
 Francis Schwindt

## NOTICE OF PUBLIC HEARING

**TAKE NOTICE** that the North Dakota Department of Health will hold a public hearing to address the proposed repeal of the following North Dakota Administrative Code rules:

Chapter 33-02-01. Performance of Standard Serological Tests for Syphilis. (Statute was repealed in 1983.)

Chapter 33-03-01. Free Standing Outpatient Facility—Including Surgical Facilities—Excluding Physician Clinic. (Construction standards are outdated and no longer apply.)

Chapter 33-03-03. Maintenance and Operation of Public Water Works Systems, Swimming Pools, and Sewerage Systems. (Replaced by article 33-19 Certification of Water and Wastewater Systems Operators.)

Chapter 33-03-04. Quality of Water. (Replaced by chapter 33-17-01 Public Water Supply Systems in North Dakota.)

Chapter 33-03-05. School Water and Sewerage Systems. (Replaced by chapter 33-03-08 Approval of Plans & Specifications Prior to Construction of Water Works and Sewerage Systems and chapter 33-17-01 Public Water Supply Systems in North Dakota.)

Chapter 33-03-06. Sale of Bulk and Bottled Water Supplies Intended for Domestic Purposes. (Replaced by chapter 33-17-01 Public Water Supply Systems in North Dakota.)

Chapter 33-03-07. Care and Disposal of Refuse and Garbage. (Replaced by article 33-20 Solid Waste Management and Land Protection.)

Chapter 33-03-16. Construction and Location of Toilets. (Now covered by article 62-03 State Plumbing Code.)

Chapter 33-03-17. Temporary Work Camps. (Obsolete and would be covered by article 62-03 State Plumbing Code.)

Chapter 33-03-18. Milk Sanitation. (Now under the jurisdiction of the ND Agriculture Department.)

Chapter 33-03-19. Food and Drink Sanitation. (Now covered in chapter 33-33-04 Food Code.)

Chapter 33-03-20. Minimum Requirements for Sanitation in Places of Employment. (Covered under article 4-08 State Building Code and article 62-03 State Plumbing Code.)

Chapter 33-03-21. Minimum Requirements for Sanitation in Camps. (Now covered under chapter 33-33-02 Trailer Park and Campground Rules, article 62-03 State Plumbing Code, article 24-02 Electrical Wiring Standards, and article 33-39 Lodging Establishments.)

Chapter 33-03-22. Migrant Labor Housing. (Now covered under chapter 33-33-02 Trailer Park and Campground Rules, article 62-03 State Plumbing Code, article 24-02 Electrical Wiring Standards, and article 33-39 Lodging Establishments.)

Chapter 33-06-06. Food Handlers. (Now covered in chapter 33-33-04 Food Code.)

Chapter 33-31-01. Rules Pertaining to Foods, Drugs, Cosmetics. (Covered under federal regulations.)

Chapter 33-31-02. Definitions and Standards for Food Products. (Covered under federal regulations.)

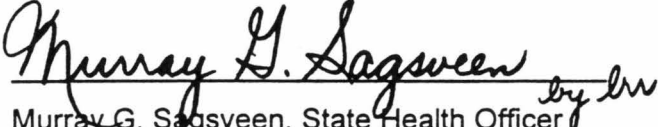
The proposed rules are not expected to have an impact on the regulated community in excess of \$50,000.

The public hearing will be held at 1:00 p.m. on February 8, 1999 in Room 201 of the Judicial Wing, 600 East Boulevard Avenue, Bismarck, ND 58505-0200.

These rules may be reviewed in the Office of the State Health Officer at the above address. A copy of the repealed rules may be requested by writing the above address or calling 701-328-2372. Written or oral data, views, or arguments on these rules sent to the State Health Officer at the above address or phone number and received by March 12, 1999 will be fully considered.

If you plan to attend the public hearing and will need specific facilities or assistance relating to a disability, please contact the Health Department at the above phone number or address at least three days prior to the public hearing.

DATED this 4th day of December, 1998.

  
Murray G. Sagsveen, State Health Officer  
North Dakota Department of Health



Education Standards and Practices Board  
600 East Boulevard Avenue  
Bismarck, ND 58505-0080  
(701) 328-2264 Fax #328-2815

December 16, 1998

Mr. John Walstad  
Code Reviser  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard Avenue, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0080

DEC 16 1998

Dear Mr. Walstad:

The Notice of Intent to Amend Administrative Rules required by NDCC 28-32-02 is enclosed.

Sincerely,

Janet Placek  
Executive Director and Board Secretary

Enclosure

## NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES

TAKE NOTICE that the Education standards and Practices Board will hold a public hearing to address proposed rules adoption and amendments of N.D. Administrative Code 67.1 at 2:00 p.m. on February 10, 1999 in Embassy Room B at the Kelly Inn, 1800 North 12<sup>th</sup> Street, Bismarck, ND. The purpose of the proposed amendments is to amend existing laws and rules of certification. The proposed amendments address the organization and duties of the Board, initial and continuing certification rules and fees, and program approval of teacher education for certification. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the Education Standards and Practices Board, 9<sup>th</sup> Floor, 600 East Boulevard Avenue, Bismarck, ND 58505-0080. A copy of the proposed rules may be requested by writing to the above address or calling 701-328-2264. Written or oral data, views, or arguments on the proposed rules sent to the above address or phone number and received by March 10, 1999, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Education Standards and Practices Board at the above number or address at least three days in advance prior to the public hearing.

Dated this 15<sup>th</sup> day of December, 1998.

Janet Placek, Board Secretary

SECRETARY OF STATE  
ALVIN A. JAEGER

HOME PAGE <http://www.state.nd.us/sec>



DEC 23 1998

PHONE (701) 328-2900  
FAX (701) 328-2992

E-MAIL [sos@state.nd.us](mailto:sos@state.nd.us)

SECRETARY OF STATE

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

December 23, 1998

Mr. John Walstad  
Code Revisor  
Legislative Council  
600 East Boulevard  
Bismarck, ND 58505

RE: Proposed Amendment to North Dakota Administrative Code  
Central Notice System – Section 72-01-02-07 (4).

Dear Mr. Walstad,

Pursuant to the provisions of N.D.C.C. Chapter 28-32, I have enclosed a Notice of Intent to Amend Administrative Rules.

This amendment relates to the signature requirements on a continuation statement of a filing in the central notice system.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alvin A. Jaeger".

Alvin A Jaeger  
Secretary of State

## NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES

TAKE NOTICE that the North Dakota Secretary of State will hold a public hearing to address proposed amendment in North Dakota Administrative Code Section 72-01-02-07 (4). The hearing will be held on February 15, 1999, at 2:00 p.m., in the office of the Secretary of State, First Floor, State Capitol, 600 East Boulevard Avenue, Bismarck, North Dakota. The purpose of the proposed amendment is to remove the requirement for the debtor's signature on a continuation statement filed under the Central Notice Filing System. The Packers and Stockyard Administration of the United States Department of Agriculture has amended its federal regulations, effective January 4, 1999, to provide that continuation statements filed on Central Notice System Effective Financing Statements do not need a signature of the debtor.

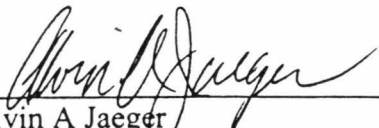
The proposed new rule is not expected to have in impact on the regulated community in excess of \$50,000.

The proposed rule may be reviewed at the office of the Secretary of State. Or, a copy of the proposed rule may be requested by writing Robert R. Schaible, Deputy Secretary of State, 600 East Boulevard Avenue, Bismarck, ND 58505-0500, or by calling (701) 328-2900.

Written or oral data, views, or arguments on the proposed rules may be sent to the above address or telephone number and must be received by 5:00 p.m., March 17, 1999, to be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Secretary of State's office at the above phone number or address at least ten days prior to the public hearing.

Dated the twenty-third day of December, 1998

  
\_\_\_\_\_  
Alvin A Jaeger  
Secretary of State

January 12, 1999

**SENATE JUDICIARY COMMITTEE  
SB 2027**

**CHAIRMAN STENEHJEM AND COMMITTEE MEMBERS:**

My name is Denise Lawson. I'm appearing today on behalf of the North Dakota Newspaper Association. We support SB 2027 and urge that you give it a DO PASS.

I've attached a copy of the testimony presented at an interim meeting of the Administrative Rules Committee. In summary, we basically made three points about the benefits of this legislation:

1. The format would ensure consistency. Currently the public notices are published in a variety of sizes, and with inconsistent application of the required "text." Our association is continually striving for consistencies in publications;
2. Utilizing the official county newspapers is the most efficient avenue to reach all of North Dakota. Each county is represented by an official publication, and each of those publications includes a variety of public notices read by a loyal subscription base. Increasing the newspapers from the ten dailies to the 53 county newspapers results in an increase in circulation from 186,261 to 274, 258, or an increase of almost 88,000 subscribers (193,593 readership);
3. This change represents good, conscientious government. Our industry and association continues to support open government through efficient public notice and open meetings and records. This change ensures that the notice of administrative rule changes be given to our citizens in a consistent, efficient manner. This change is an opportunity to support public notice for the very reason that it's so important – an informed public makes for good government and programs.

Lastly, we realize that some of the opposition to this bill is concerned about increased costs. Although the cost per insertion would increase, the overall increase to a department budget regarding the publication of administrative rules utilizing this process does not, we believe, outweigh the benefits of a more consistent and informed public.

We respectfully request a DO PASS on this bill.

I would be happy to answer any questions. THANK YOU FOR YOUR TIME AND CONSIDERATION.



DATE: September 30, 1998

TO: Administrative Rules Committee

FROM: Neal Shipman, President  
North Dakota Newspaper Association

The law now requires that meeting notices for proposed administrative rules changes be published in the state's 10 daily newspapers. From our research, the average cost of these notices ranges between \$800 and \$1,500 per hearing.

We propose a change in the law to publish a simple, standardized display notice (similar to the sample below) in either all North Dakota newspapers or at least in every official county newspaper. We think you could more than double the exposure and enhance readership for a similar amount of money. North Dakota's daily newspapers have a total circulation of 186,261. For comparison purposes:

- \* The above notice published in every newspaper would cost \$1,562 and reach 310,628 subscribers.
- \* Using only official county newspapers, the cost would be \$1,117 reaching 274,258 subscribers.
- \* Publishing the notice for 2 consecutive weeks in the official county newspapers would cost \$2234.

The North Dakota Newspaper Association has a free system in place that could save time, paper work and administrative costs for the agencies. We would prepare the copy, send out the notices, pay the individual newspapers and submit a single billing to the agency. Only one check would have to be written.

In addition, we believe the usefulness of these notices can be enhanced by using simple, direct language in place of the legal terminology that can make notices difficult to comprehend.

If you have questions or would like further information, please don't hesitate to contact either me at the McKenzie County Farmer, Watford City, 701-842-2351.

**Notice of Hearing**

***Day Care  
Licensure***

Changes are proposed in  
Administrative Rules relating to the  
licensure of Day Care Centers  
and Homes.

You may secure an explanation or  
a copy of the proposed changes by  
calling 701-328-???? and/or you may  
attend a public hearing to present or  
listen to testimony in the

**Prairie Room, State Capitol  
Bismarck, ND  
Tuesday, Sept. 22, 9:00 a.m.**

**TESTIMONY BEFORE THE  
SENATE JUDICIARY COMMITTEE  
REGARDING HOUSE BILL NO. 2027  
January 12, 1998**

**Chairman Stenehjem and members of the Senate Judiciary Committee, my name is Blaine Nordwall. I appear on behalf of the Department of Human Services.**

**During the calendar years 1996 through 1998, the department published notices for 62 rulemaking projects at an average of \$462.92 per notice. We have consulted with the North Dakota Newspaper Association, and have learned that the cost for notices under Senate Bill 2027 will be not less than \$1,638 and not more than \$2,184 per rulemaking project. Assuming an average notice cost of \$1,911 per rulemaking project, our public notice costs will more than quadruple.**

**I understand and appreciate that more households and readers may have an opportunity to review notices if Senate Bill 2027 becomes law. However, in nearly two decades of conducting rulemaking hearings and reviewing written comments, I have yet to hear anyone indicate they received notice of the rulemaking through a published notice. For that reason, it has long been the department's practice to send individual notices to individuals who have asked to receive such notices or who are known to us to be interested. It is those individual notices that we believe typically alert interested persons.**

**Because we currently provide two notices in daily publications, and Senate Bill 2027 would require two notices in weekly publications, we also anticipate that this bill would add ten days to two weeks to the time it currently takes to complete rulemaking. That concerns us because, as a practical matter, it already takes at least six months to complete a rulemaking project.**

**For these reasons, the department cannot support Senate Bill 2027.**

**If it is this committee's desire to recommend a "do pass" on Senate Bill 2027, we also ask the committee to consider an amendment. Currently, using daily papers, those papers occasionally fail to publish the notice when requested. Such failures have the potential of requiring the publication of new notices and the rescheduling of hearings. Most county newspapers are weeklies, and, unlike the dailies, are not typically able to dedicate staff exclusively to preparing and inserting notices. We anticipate at least the same proportion of publishing errors, and, thus, with 53 required publishers in all, considerably increasing the likelihood of a publishing error.**

**This problem could be addressed if the law were to be satisfied by an agency's request for publication. That way compliance would depend upon the agency's efforts, rather than the newspapers' actual publication.**

**Presented by:**

**Blaine L. Nordwall  
Director, Legal Advisory Unit  
ND Department of Human Services**

Prepared by the North Dakota  
Department of Human Services  
1/11/99

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

Page 1, line 16, after "and" insert "the agency must request  
publication of"

Page 1, line 17, remove "must be" and overstrike "published"

Renumber accordingly

**S.B. 2027**

**Presented by:** Charles E. Johnson  
Public Service Commission

**Before:** Judiciary Committee  
Senator Wayne Stenehjem, Chairman

**Date:** January 12, 1999

**TESTIMONY**

Mr. Chairman and committee members, I am Charles E. Johnson, an attorney with the Public Service Commission (Commission). I appear on behalf of the Commission.

The Public Service Commission is concerned about this bill because of the additional cost required for publishing notice of a proposed rulemaking. The fiscal note estimates that the cost of publication for a rulemaking will increase from \$800 to \$2,234. The Commission did not budget for this significant increase. It expects between 5 and 10 rulemakings over the next two years.

The Commission maintains mailing lists of those members the telecommunications, electric, gas, coal, and grain elevator industries, among others, that are interested in Commission matters, including its rulemakings.

In addition to publishing the notice of a rulemaking in the daily newspapers and through the Legislative Council, the Commission mails notice of the proposed rulemaking to those on the appropriate industry mailing list.

The Commission has not received any complaints from any member of the industry or the public that the individual or company was not aware of a proposed

rulemaking or was not able to participate in the rulemaking proceeding. The present requirement of publishing in the daily newspapers together with mailing to interested parties appears to have been adequate in the past and would not appear to need change.

**Fifty-sixth Legislative Assembly**  
**Senate Bill 2027**  
**February 24, 1999 9:30 am**  
**Ft Lincoln Room**

Chairman DeKrey, and members of the House Judiciary committee. My name is Daniel Biesheuvel, I am a lobbyist for R-KIDS of North Dakota.

In the Senate Committee, I rebutted Blaine Nordwell's testimony about the unnecessariness of this legislation by explaining the process R-KIDS went through to just "attend" a public hearing.

R-KIDS was made aware of the public hearings from a *Notice of Intent* packet from the DHS, dated July 31, but not received until August 11. This information was received only after Susan Beehler's inquiry of the Attorney General's office for open meeting rule application concerning the Guidelines Advisory Committee. This ruling opened the previously closed committee meetings.

While awaiting proper public notification, R-KIDS also learned of the September 28 and 30 meetings at the **September 28** Child Support Interim Hearing.

Frantically, R-KIDS announced the hearing times and dates on a call-in talk show on KFYR-AM radio, and scrambled to called all members. We unsuccessfully requested the local TV media to cover this story, but were able to get Community Access Television to do a live coverage.

No proper or recognizable dates and times were found in the local newspaper by anyone in R-KIDS. Simply, there was no proper notification.

When asked about this in a meeting, Carol Olson, Director of the DHS, she said they did their legal duty, by including it in the public notification section of the paper where other city, county and state information is printed. R-KIDS argued that most of the public doesn't take on the agonizing task of reading public notices, because of the type size and dreariness of those sections. The notification should be made more apparent.

If a **public** hearing notification is to be made, so the **public** these rules are affecting can attend, the notification should be....**noticeable!** Hiding notifications does not serve the public well.

R-KIDS asks for a do pass on Senate Bill 2027.

Thank you, and I will attempt to answer any questions.

## MEMORANDUM

TO: Conference Committee on SB 2027  
Senator W. Stenehjem  
Senator Nelson  
Senator Traynor  
Representative Hawken  
Representative Mahoney  
✓Senate Judiciary Committee Clerk

FROM: Representative Klemin

SUBJECT: Amendments to SB 2027

DATE: March 30, 1999

The amendments to SB 2027 prepared by Jack McDonald of the North Dakota Newspaper Association were not as the Conference Committee had requested. Instead, Mr. McDonald submitted an argument that the amendments requested by the Committee should not be adopted on the grounds that the Attorney General cannot approve a proposed new rule unless there has been "substantial compliance" with the publication requirement. This would result in a "wait and see" procedure that I do not favor.

The original concern by the agencies related to the cost of publishing all of the notices over again if one or more newspapers inadvertently failed to publish a notice as the agency had requested. Mr. McDonald's suggestion could substantially increase the cost if the Attorney General determined that there had not been "substantial compliance" which would mean that not only would the notices have to be republished, but also the hearing would have to be held again, at additional expense, to take the testimony of any person who might not have been aware of the hearing due to the failure to publish the notice.

Attached is a proposed Conference Committee Report that I believe addresses the concerns of the Conference Committee. Perhaps the Chair could schedule another meeting of the Conference Committee to further review this matter.



PROPOSED CONFERENCE COMMITTEE REPORT ON SB 2027

That the Senate accede to the House amendments on House Journal page 722 and adopt further amendments as follows and place SB 2027 on the Seventh Order:

Page 1, line 19, remove "published"

Page 2, line 1, after "rules" insert "or to submit written comments"

Page 2, line 12, after the period insert "The failure of a newspaper to publish the notice as requested by the agency shall not invalidate the publication requirement of this section for purposes of the thirty-day period if the notice is published by that newspaper within seven days of the date that the notice should have been published."

Renumber accordingly

April 5, 1999

## **SB 2027 CONFERENCE COMMITTEE: REVISED COMMENTS**

### **CHAIRMAN STENEHJEM AND COMMITTEE MEMBERS:**

My name is Jack McDonald. I'm representing The North Dakota Newspaper Association. The proposed amendments I submitted to you earlier were made to the engrossed bill as it came over to the House from the Senate, since you are proposing to have the House recede from its amendments.

At your last conference committee meeting, you decided to have the House recede from its amendments and then to further amend the bill in two ways: 1) loosen the 30 day restriction in instances where a publication may be delayed; and 2) add language about where rule comments could be sent.

I respectfully suggest that #1 is not needed for two reasons. One is the "substantial compliance" language found in §§28-32-02(7) and 28-32-03 (attached). No rule is valid unless there has been substantial compliance with the rule making procedures (§28-32-02[7] and §28-32-03).

Further, the inadvertent lack of notice does not invalidate the rule (§28-32-03). Thus, if one of the 53 notices was late, the attorney general would likely rule there was still substantial compliance (§28-32-02[7]). However, if 15 are late; if the one late was The Fargo Forum (the state's largest paper in the largest county); or if there was no notice at all, as was suggested as a worst case scenario, then obviously there would not be substantial compliance.

Secondly, HB 1024 (first engrossed copy enclosed) changes the 30 day notice period to 14 days. Thus, putting in language saying the publication would work if published 7 days after the required date, will not allow enough time to determine if correct publication had been made.

I've also made a couple of editorial amendments to make the bill read a bit better. If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION. The other amendments follow:

#### PROPOSED CONFERENCE COMMITTEE REPORT

That the House recede from its amendments as printed on page 660 of the Senate Journal and page 722 of the House Journal, and that Engrossed Senate Bill 2027 be amended as follows:

On Page 1, line 19, after "The" insert "abbreviated"

On page 1, line 23, insert a period after the word "rules", and delete the first word "and" and insert "This notice must also contain"

On Page 1, line 24, after the word "rules" insert "or to submit written comments,"

Renumber accordingly

Fifty-sixth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2027

Introduced by

Legislative Council

(Administrative Rules Committee)

1 A BILL for an Act to amend and reenact subsection 4 of section 28-32-02 of the North Dakota  
2 Century Code, relating to publication of notice of administrative rulemaking; and to provide an  
3 effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-02 of the 1997  
6 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7 4. The agency's full notice of the proposed adoption, amendment, or repeal of a rule  
8 must include a short, specific explanation of the proposed rule and the purpose of  
9 the proposed rule, a determination of whether the proposed rulemaking is  
10 expected to have an impact on the regulated community in excess of fifty thousand  
11 dollars, identify at least one location where interested persons may review the text  
12 of the proposed rule, provide the address to which written data, views, or  
13 arguments concerning the proposed rule may be sent, provide a phone number at  
14 which a copy of the rules and regulatory analysis may be requested, and, in the  
15 case of a substantive rule, provide the time and place set for each oral hearing.

16 The agency's full notice must be filed with the office of the legislative council, and  
17 ~~published~~ the agency shall request publication of an abbreviated newspaper  
18 publication notice at least ~~twice~~ once in each daily newspaper of general *abbreviated*  
19 circulation official county newspaper published in this state. ~~The newspaper~~  
20 publication of notice must be in a display-type format with a minimum width of one  
21 column of approximately two inches [5.08 centimeters] and a depth of from three  
22 inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline  
23 describing the general topic of the proposed rules, and the address and telephone  
24 number to use to obtain a copy of the proposed rules and the location, date, and

*abbreviated*  
THIS NOTICE MUST ALSO CONTAIN  
OR TO submit WRITTEN COMMENTS,

\*11694 N.D. Code § 28-32-02

WEST'S NORTH DAKOTA CODE  
TITLE 28. JUDICIAL PROCEDURE, CIVIL  
CHAPTER 28-32. ADMINISTRATIVE AGENCIES PRACTICE ACT

*Current through the 1997 Regular Session of the 55th Legislative Assembly (1997)*

§ 28-32-02. Rulemaking power of agency--Adoption deadlines--Hearing notice--Emergencies--Attorney general's opinion

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with the provisions of this chapter and any statute administered or enforced by the agency.
2. Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the office of the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.
3. The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.
4. The agency's notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent, provide a phone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The agency shall mail a copy of the notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse between the later of the date of the second publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the second publication, whichever is later. Subject to subsection 5, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative

council on the first business day of the following month to any person making a request. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of not less than thirty days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

- \*11695 5. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of subsection 4 and a procedure whereby any person may request and receive mailed copies of all filings made by agencies pursuant to subsection 4. The legislative council may charge for providing copies of the filings.
6. If the agency finds that emergency rulemaking is necessary because of imminent peril to the public health, safety, or welfare, because a delay in rulemaking is likely to cause a loss of revenues appropriated to support a duty imposed by law upon the agency, or because reasonably necessary to avoid a delay in implementing an appropriations measure, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by subsection 4. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule. The agency's finding, and a brief statement of the reasons therefor, must be filed with the office of the legislative council, along with any final rule adopted. The agency shall take appropriate measures to make interim final rules known to every person who may be affected by them. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.
7. Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable, or when the procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.

*Amended by L.1995, c. 308, § 2, eff. Aug. 1, 1995; L.1995, c. 309, § 2, eff. Aug. 1, 1995; L.1995, c. 310, § 1, eff. Aug. 1, 1995.*

#### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

L.1995, c. 310, § 5 provides:

"EFFECTIVE DATE--SUSPENSION. This Act is effective for any rule adopted by an administrative agency after July 30, 1995. Section 4 of this Act is suspended from operation and becomes effective retroactive to August 1, 1995, upon a ruling by the North Dakota supreme court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of this Act is unconstitutional."

Search this disc for cases citing this section.

\*11702 N.D. Code § 28-32-03

WEST'S NORTH DAKOTA CODE  
TITLE 28. JUDICIAL PROCEDURE, CIVIL  
CHAPTER 28-32. ADMINISTRATIVE AGENCIES PRACTICE ACT

*Current through the 1997 Regular Session of the 55th Legislative Assembly (1997)*

§ 28-32-03. Filing of rules--Force and effect of rules--Form and style of rules--Rules invalid unless in compliance with chapter

1. A copy of each rule adopted by an administrative agency, and the attorney general's opinion thereon, must be filed by the adopting agency with the office of the legislative council for publication in the North Dakota Administrative Code.
2. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council become effective the first day of the month after the month of publication as provided for in section 28-32-03.1, except that if a later date is required by statute, specified in the rule, or provided under section 28-32-03.3, the later date is the effective date. A rule found to be void by the committee on administrative rules is void from the time provided under section 28-32-03.3. If publication is delayed due to technological problems or lack of funds, nonemergency rules, unless otherwise provided, become effective on the first day of the month after the month publication would have occurred but for the delay.
3. Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency, declared invalid by a final court decision, suspended or found to be void by the committee on administrative rules, or determined repealed by the office of the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.
4. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
5. A rule is invalid unless adopted in substantial compliance with this chapter. However, inadvertent failure to supply any person with a notice required by section 28-32-02 does not invalidate a rule. Notwithstanding subsection 2 of section 28-32-15, an action to contest the validity of a rule on the grounds of noncompliance with this chapter may not be commenced more than two years after the effective date of the rule. \*11703

*Amended by L.1995, c. 310, § 2.*

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

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"EFFECTIVE DATE--SUSPENSION. This Act is effective for any rule adopted by an administrative agency after July 30,

1995. Section 4 of this Act is suspended from operation and becomes effective retroactive to August 1, 1995, upon a ruling by the North Dakota supreme court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of this Act is unconstitutional."

Search this disc for cases citing this section.

**Bill  
Actions**

Go to HB  
1024  
Versions

Select New Bill No.

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1999 Legislative  
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Legislative Council

(Administrative Rules Committee)

A BILL for an Act to create and enact section 28-32-03.4 of the North Dakota Century Code relating to authority of the administrative rules committee to call up existing administrative rules for review; to amend and reenact subsection 1 of section 4-18.1-20 and subject section 28-32-03.3 of the North Dakota Century Code, relating to statutory reference administrative rulemaking provisions and authority of the administrative rules committee to void or object to administrative rules; to repeal section 28-32-04 of the North Dakota Century Code, relating to petitions for reconsideration of administrative rulemaking; and to an effective date.

01/05 House Introduced, first reading, referred Judiciary HJ 27  
01/11 House Committee Hearing 10:00  
02/15 House Reported back amended, do not pass, y 011 n 004 HJ 509  
02/16 House Amendment adopted, placed on calendar HJ 527  
Division of amendment HJ 527  
Division A adopted HJ 527  
Division B defeated HJ 527  
Amendment adopted HJ 529  
Second reading, passed as amended, yeas 068 nays 030 HJ 529  
02/17 Senate Received from House SJ 537  
02/24 Senate Introduced, first reading, referred Government and Veterans Affairs S  
03/18 Senate Committee Hearing 09:30  
03/29 Senate Reported back amended, amendment passed y 007 n 000 SJ 911  
03/30 Senate Amendment adopted, placed on calendar SJ 927  
Second reading, passed as amended, yeas 047 nays 001 SJ 927  
03/30 House Returned to House (12) HJ1068  
03/31 House Refused to concur HJ1074  
Conf comm appointed Koppelman Klemin Meyer HJ107  
04/01 Senate Conf comm appointed Wardner W. Stenehjem DeMers SJ 98

(over)



Introduced by

Legislative Council

(Administrative Rules Committee)

1 A BILL for an Act to amend and reenact subsection 1 of section 4-18.1-20 and subsections 4  
2 and 7 of section 28-32-02 of the North Dakota Century Code, relating to statutory references to  
3 administrative rulemaking provisions and administrative rulemaking procedures; and to provide  
4 an effective date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 4-18.1-20 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 1. The rules of practice, regulations, and stabilization plans issued by the board are  
9 ~~declared to be "rules and regulations" as that phrase is defined in chapter 28-32.~~  
10 The requirements of sections 28-32-02 through 28-32-04 are applicable to any  
11 board proceeding ~~which~~ that results in the adoption, amendment, or repeal of any  
12 rule of practice, regulation, or stabilization plan.

13 **SECTION 2. AMENDMENT.** Subsections 4 and 7 of section 28-32-02 of the 1997  
14 Supplement to the North Dakota Century Code are amended and reenacted as follows:

15 4. The agency's notice of the proposed adoption, amendment, or repeal of a rule  
16 must include a short, specific explanation of the proposed rule and the purpose of  
17 the proposed rule, a determination of whether the proposed rulemaking is  
18 expected to have an impact on the regulated community in excess of fifty thousand  
19 dollars, identify at least one location where interested persons may review the text  
20 of the proposed rule, provide the address to which written data, views, or  
21 arguments concerning the proposed rule may be sent, provide a phone number at  
22 which a copy of the rules and regulatory analysis may be requested, and, in the  
23 case of a substantive rule, provide the time and place set for each oral hearing.  
24 The notice must be filed with the office of the legislative council and published at

1 least twice in each daily newspaper of general circulation published in this state.  
2 The agency shall mail a copy of the notice to each person who has made a timely  
3 request to the agency for a mailed copy of the notice. The agency may mail or  
4 otherwise provide a copy of the notice to any person who is likely to be an  
5 interested person. The agency shall mail or deliver a copy of the rules to any  
6 person requesting a copy. The agency may charge for the actual cost of providing  
7 copies of the proposed rule. At least ~~thirty~~ fourteen days must elapse between the  
8 later of the date of the second publication of the notice or the date the legislative  
9 council mails copies of an agency's notice and the date of the hearing. ~~The~~  
10 ~~thirty day period begins on the first business day of the month in which the notices~~  
11 ~~must be mailed or on the date of the second publication, whichever is later. At~~  
12 least fourteen days before the hearing, the agency shall provide the attorney  
13 general a copy of the notice and the proposed rules. Subject to subsection 5,  
14 notices filed on or before the last calendar day of the preceding month must be  
15 mailed by the legislative council on the first business day of the following month to  
16 any person making a request. The agency shall allow, after the conclusion of any  
17 rulemaking hearing, a comment period of not less than ~~thirty~~ fourteen days during  
18 which data, views, or arguments concerning the proposed rulemaking will be  
19 received by the agency and made a part of the rulemaking record to be considered  
20 by the agency.

- 21 7. Every rule ~~proposed~~ submitted to the attorney general by any administrative  
22 agency must be ~~submitted to~~ reviewed by the attorney general for an opinion as to  
23 its legality before final adoption, ~~and the~~. The attorney general shall promptly  
24 furnish each such the agency a preliminary opinion, based upon the rules as  
25 submitted, by the close of the comment period for those rules. After the close of  
26 the comment period, the agency shall advise the attorney general of each change  
27 to the proposed rules made in contemplation of final adoption and the attorney  
28 general shall promptly furnish an opinion as to legality of the rules contemplated  
29 for final adoption. The attorney general may not approve any rule as to legality  
30 when the rule exceeds the statutory authority of the agency or is written in a  
31 manner that is not concise or easily understandable, or when the procedural

(over)

1 requirements for adoption of the rule in this chapter are not substantially met. The  
2 attorney general shall advise an agency of any revision or rewording of a rule  
3 necessary to correct objections as to legality.

4 **SECTION 3. EFFECTIVE DATE.** Section 2 of this Act is effective for administrative  
5 rulemaking proceedings for which the notice of rulemaking is published after July 31, 1999.